

REMARKS UNDER 37 CFR § 1.111

Formal Matters

Claims 77-123 are pending after entry of the amendments set forth herein.

Claims 77-123 were examined. Claims 115-123 were rejected. Claims 77-114 were allowed.

Applicants respectfully request reconsideration of the application in view of the amendments and remarks made herein.

No new matter has been added.

The Office Action

Claims Rejected Under 35 U.S.C. Section 102(e) (Sherts et al.)

In the Official Action of August 31, 2007, claims 115-119 and 123 were rejected under 35 U.S.C. Section 102(e) as being anticipated by Sherts et al., U.S. Patent No. 5,947,896. The Examiner asserted that Sherts et al. teaches a first device 64 and a second device 100. The Examiner considered element 64 to include proximal portion 78, 82 and 84 fixable with respect to element 12, while engaging portion 66 is movable by elements 76 and 80.

Applicants have amended claim 115 above to clarify that the engaging portion moves with movements of the beating heart while maintaining the beating heart in the displaced position. It is respectfully submitted that device 64 of Sherts et al., while adjustable via 76 and 80, must be locked via 76 and 80 before portion 66 can maintain the heart in a displaced position. Accordingly, portion 66 cannot move with movements of the beating heart and at the same time maintain the beating heart in a displaced position. Applicants therefore respectfully submit that claim 115 and claims 116-119 and 123 are allowable over Sherts et al. for at least this reason.

With regard to claim 123, it is respectfully submitted that this claim depends from claim 122. Since claim 122 was not rejected over Sherts et al., it is respectfully submitted that the rejection of claim 123 over Sherts et al. is improper.

Accordingly, in view of the above amendment of claim 115 and the remarks made above, the Examiner is respectfully requested to reconsider and withdraw the rejection of claims 115-119 and 123

under 35 U.S.C. Section 102(e) as being anticipated by Sherts et al., U.S. Patent No. 5,947,896, as being no longer appropriate.

Claims Rejected Under 35 U.S.C. Section 102(e) (Borst et al.)

Claims 115-122 were rejected under 35 U.S.C. Section 102(e) as being anticipated by Borst et al., U.S. Patent No. 5,927,284. The Examiner asserted that Borst et al. discloses a first device 12, a second device 13, and that a proximal end 14 is connected to surgical table 16, where the distal end is free to move and then be locked by the joints of 14.

Applicants respectfully submit that 14 is a securing device, see column 4, lines 38-40 and is not a part of either device 12 or device 13. In any case, both devices 12 and 13 are stabilizers, not manipulators. As such, neither device 12 nor device 13 can move with movements of the beating heart while maintaining the beating heart in a displaced position, in a manner as currently recited by claim 115. It is respectfully submitted that devices 12 and 13 of Borst et al. must be fixed by securing devices 14,15 to accomplish their stabilizing functions, and therefore they do not move with the beating heart. Conversely, if devices 12 and 13 were not fixed so that they could move with the beating heart while engaged therewith, they could not maintain the beating heart in a displaced position.

Applicants therefore respectfully submit that claim 115 and claims 116-122 are allowable over Borst et al. for at least these reasons.

Accordingly, in view of the above amendment of claim 115 and the remarks made above, the Examiner is respectfully requested to reconsider and withdraw the rejection of claims 115-122 under 35 U.S.C. Section 102(e) as being anticipated by Borst et al., U.S. Patent No. 5,927,284, as being no longer appropriate.

Allowable Subject Matter

Applicants wish to extend their thanks to the Examiner for the indicated allowance of claims 77-114.

Conclusion


Applicants submit that all of the claims are in condition for allowance, which action is requested. If the Examiner finds that a telephone conference would expedite the prosecution of this application, please telephone the undersigned at the number provided.

The Commissioner is hereby authorized to charge any underpayment of fees associated with this communication, including any necessary fees for extensions of time, or credit any overpayment to Deposit Account No. 50-2653, order number GUID-024CON9.

Respectfully submitted,

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